IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 80 OF 2004.

The Commissioner of Central Excise,
Thane-1. ..Appellant.

V/s.

M/s. Techno Chemical Industries. .. Respondent.

Shri Suresh Kumar with P.S. Jetly i/b T.C. Kaushik
for the applicant.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 8.9.2005.

P.C. :

. Heard learned Counsel for the Revenue.

Perused appeal memo with relevant

annexurers.

. The question sought to be raised in this appeal can conveniently be said to be covered by the judgment of the Apex Court in the case of Commissioner of Central Excise (Appeals), Ahmedabad, vs. Narayan Polyplast 2005 (179) ELT 20 (SC), wherein the Apex Court has upheld the order of the Tribunal; wherein the Tribunal had accepted the contention of the appellant that it is the option of the assessee either to avail of the full exemption available or to pay the duty leviable on the goods manufactured by him. If the assessee chose not to avail exemption and pay duty inspite of goods being fully exempt Modvat credit could not be denied on

such duty paid inputs if used in manufacture of final products. In otherwords, it is always open to the assessee to avail Modvat credit on the goods, if no exemption was claimed on the goods on the basis of exemption notification.

. The Supreme Court in the above case was considering the interpretation put on the Notification No..23/88-CE by the Tribunal. The case at hand involves interpretation of exemption notification No.175/86 dated 1.3.1996. The interpretation put by the Tribunal and approved by the Supreme Court mentioned above shall also hold good for the interpretation of the notification involved in the case at hand.

. In the above view of the matter, in our opinion, no substantial question of law is involved in this appeal. Appeal is, thus, dismissed in limine with no order as to costs.

(J.P. DEVADHAR,J.) **(V.C. DAGA,J.)**